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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 31st July 2024

S.R.O. No. 389/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award dated the 1st June 2024 passed in the ID Case No. 29 of 2022 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s V. Soft Technologies Data Centre, At Orissa State Co-operative Bank Ltd., Pandit Jawaharlal Nehru Marg, Bhubaneswar, Dist. Khurda (sub office) & Head Office at V. Soft Technologies Pvt. Ltd., DSR Inspire, Plot No. 21, Sector-1, HUDATECNO Enclave, Madhapur, Hyderabad-5000081 and Shri Bibhu Prasad Tripathy, S/o Bijay Krushna Tripathy, Plot No. S-53, Maitri Bihar, P.S. Chandrasekharapur, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 29 of 2022 [u/s 2-A(2)]

Dated the 1st June 2024

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar,

Between :

The Management of
M/s. V. Soft Technology Data Centre,
At Orissa State Co-operative Bank Ltd.,
Pandit Jawaharlal Nehru Marg,
Bhubaneswar, Dist. Khurda (sub office)
& Head Office at V. Soft Technology
Pvt. Ltd., DSR Inspire, Plot No. 21,
Sector-1, HUDATECNO Enclave,
Madhapur, Hyderabad-5000081.

.. First Party

And

Shri Bibhu Prasad Tripathy,
S/o Bijay Krushna Tripathy,
Plot No. S-53, Maitri Bihar,
P.S. Chandrasekharapur,
Bhubaneswar.

. . . Second Party

Appearance :

Shri P. K. Jena & Associates,
Advocate.

. . . For the First Party

Shri Baidhar Sahoo,
Advocate.

. . . For the 2nd Party

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the ID Act') have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. 2884—LESI-IR-ID-0016/2022-LESI, dated the 8th April 2022 :

SCHEDULE

"Whether the action of the management of M/s V. Soft Technologies Data Centre, At Orissa State Co-operative Bank Ltd., Pandit Jawaharlal Nehru Marg, Bhubaneswar, Dist. Khurda (sub office) & Head Office at V. Soft Technologies Pvt. Ltd., DSR Inspire, Plot No. 21, Sector-1, HUDATECNO Enclave, Madhapur, Hyderabad by terminating the services of Shri Bibhu Prasad Tripathy, Implementation Engineer is legal and/or justified ? If not, what relief Shri Tripathy is entitled to ?"

2. Pursuant to the order of reference, the second party entered appearance in the dispute and filed his claim statement stating *inter alia* that initially he got appointed under the first party as an "Implementation Engineer-Trainee" and accordingly he joined his service on 1st December 2014 at Bhubaneswar in the premises of Odisha State Co-operative Bank with a remuneration of Rs. 1,44,000 per annum and subsequently confirmed in the said post with a remuneration of Rs. 1,56,000 per annum. It is stated that on an agreement being signed by the first party with the Odisha State Co-operative Bank for giving hand holding support in different Central Co-operative Banks including 17 Central Co-operative Banks functioning in the State of Odisha, he was asked to give software support to the Banks and while continuing so he was posted at Angul United Central Co-operative Bank Ltd. in the month of December 2016. It is specifically stated in the claim statement that the second party applied for leave for one day i.e. for 10th December 2019 and intimated such fact to the Assistant Vice President Shri Lalatendu Mohanty with copy to the Angul UCC Bank Ltd. and OSC Bank Ltd. but without considering such leave application he was intimated by the Assistant Vice President through WhatsApp not to attend office with effect from the 11th December 2019 and pursuant to such instruction though he stayed at Angul, yet did not attend office effect from the 11th December 2019. Further stated that while at Angul he was informed by the Senior HR of the first party through mail dated the 24th December 2019 that his service is no more and has been terminated retrospectively effect from the 10th December 2019. According to the second party, he having rendered continuous service for more than five years as a regular workman under the first party was entitled to the protection of Section 25-F of the ID Act and for non-compliance of the said provision by the first party his termination can in no way be termed as

legal. Besides, it is alleged that the first party on terminating his service has also appointed a fresh hand in his place and thereby it has violated the provisions of Section 25-H of the Act. Further assertion of the second party is that during the entire period of his employment he was neither charge sheeted for any misconduct nor any enquiry was ever conducted against him for any dereliction in duty and without there being a justifiable cause he has been thrown out of employment ignoring the principles of natural justice. In the above background, the second party has prayed for reinstatement in service, full back wages and other consequential service benefits.

3. The Assistant Vice President representing the Management has filed the written statement. Challenging the status of the second party, it is stated in the written statement that since the second party was performing managerial nature of duties under the first party and was drawing wages of Rs.1,44,000 per annum, he is not a workman as defined u/s 2(s) of the ID Act. Disputing the averments of the claim statement, it is stated that on 9th December 2019 the Secretary of Angul CC Bank visited Gondia for certain banking business and wanted to take information from the second party but as he found him absent the matter was reported to the first party for taking suitable action and thereafter he remained absent from his duty on 10th December 2019 and thereby has voluntarily abandoned his employment. It is the specific plea of the first party that as per the leave rules of the company, the second party was required to report for his absence to the concerned authorities but for his remaining unauthorised absence from duty, the claim advanced on his behalf merits absolutely no consideration and is liable to be rejected with exemplary cost.

4. The second party filed a rejoinder to the written statement mostly reiterating the stand it has taken in the claim statement and further asserting that his work was neither managerial nor supervisory in nature, inasmuch as, his work was not independent in nature and he was doing work as per the instruction of his higher authorities.

5. Basing on the pleadings of the parties, the following issues have been framed for determination:-

ISSUES

- (i) Is the reference maintainable ?
- (ii) Is Shri Bibhu Prasad Tripathy, Ex-Implementation Engineer a workman as defined under Section 2(s) of the ID. Act, 1947 ?
- (iii) Is the action of the management of M/s V.Soft Technologies Data Centre, At: Orissa State Co-operative Bank Ltd., Pandit Jawaharlal Nehru Marg, Bhubaneswar, Dist: Khurda (sub office) & Head Office at V.Soft Technologies Pvt. Ltd., DSR Inspire, Plot No. 21, Sector-1, HUDATECNO Enclave, Madhapur, Hyderabad by terminating the services of Shri Bibhu Prasad Tripathy, Implementation Engineer is legal and/or justified ?
- (iv) If not, what reliefs the workman Shri Tripathy is entitled to ?

6. In order to prove their respective stand, while the second party examined himself as WW 1 and relied on documents marked Exts.1 to 13, the first party examined its Assistant Vice President Mr. Lalatendu Mohanty as MW1 and relied on documents which have been marked as Exts. A to C.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For the sake of convenience Issue Nos. (i) and (ii) are taken up for consideration together.

There being no duel over the status of the organisation of the first party, it is held to be an ‘industry’ within the meaning of Section 2 (j) of the ID Act. However, the first party has challenged maintainability of the reference on the ground that the second party was all along performing managerial nature of duties and was drawing wages more than the prescribed wages and therefore he is not coming within the definition of ‘workman’ as embodied under Section 2(s) of the ID Act. The second party, on the other hand, made a counter submission on the score and submitted that he was doing technical nature of duties under the first party and none else were thereunder his supervision. It was also contended on his behalf that remuneration being not a prime consideration to oust him from the purview of ‘workman’, he is squarely coming within the definition of ‘workman’.

Before entering into any discussion on the point, it is felt apposite to re-produce the statutory meaning of ‘workman’ as embodied in Section 2(s) of the ID Act.

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, sales promotion, operational, clerical or supervisory or any work for promotion of sales for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

Considering the legislative intention behind the definition of ‘workman’, the Hon’ble Apex Court have formulated a guiding principle to determine the status of an employee as ‘workman’ under the Industrial Disputes Act. In the context, it is useful to refer to the decision of the Hon ‘ble Supreme Court in the Case of S. K. Maini Vs. M/s Carona Sahu Company Limited and others (1994) 3 SCC 510 wherein the Hon’ble Apex Court made the following observations:

“9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not

possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd. vs. Burmah Shell Management Staff Assn.* 1971 AIR 922.

Further it has been held by the Hon'ble Apex Court in the Case of *Devinder Singh Vs. Municipal Council, Sanaur*, reported in (2011) 6 SCC 584 that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the ID Act.

8. Keeping in view the statutory meaning of 'workman' and the principle enunciated by the Hon'ble Supreme Court, now it is to be examined on the basis of materials available on record as to whether the second party is coming within the purview of 'workman' or not.

The second party in his evidence has stated that as per the requirement of the Angul UCC Bank Ltd. and the instructions of the first party he was discharging his duty being assigned with the designation as Implementing Engineer and nobody was working under his control, nor his work was independent in nature. This part of his evidence is not at all controverted by the first party. That apart, on scrutiny of the order of appointment (Ext. 2); letter of confirmation (Ext.3) and the terms and conditions embodied in Ext. 4 nothing emerges there from with regard to the specific managerial nature of duties assigned to the second party or he was ever assigned with any duty to supervise the work of the subordinates. In view of such evidence when the second party is very much emphasising that during the tenure of his employment he had never discharged managerial/supervisor nature of duties and his job was of technical nature of duties, it was incumbent on the first party to produce the duty chart showing the assigned duties of the second party or to bring in evidence the specific duties allotted to the second party to preclude him from the purview of the definition of 'workman'. Due to lack of evidence to sustain the objection raised on this score by the first party and keeping in view the guiding principle enunciated by the Hon'ble Apex Court, so also the evidence adduced by the parties, this Tribunal holds that the second party is a 'workman' as defined under Section 2(s) of the ID Act, and consequently the reference made by the Government is held to be maintainable in this forum.

Issue Nos. (i) and (ii) are answered accordingly in favour of the second party.

9. *Issue No. (iii)* —The legality and justifiability of the action of the first party is to be looked into by this Tribunal under the present issue.

It is contended by the learned counsel for the first party that for sheer negligence in duty the second party has suffered termination of his service, inasmuch as, on 9th Decmber 2019 he was found absent from his duty without any permission for which the Secretary of the Angul UCC Bank

Ltd. made a communication to the first party and basing on such complaint the service of the second party was terminated invoking the provisions of the terms of his appointment letter. Further contended, on previous occasions i.e. once on 23rd May 2019 and again from 18th October 2019 to 25th October 2019 the second party remained absent from his duties unauthorisedly and taking an overall assessment of the performance of the second party his services have been terminated, which can in way be found fault with.

Per contra, it has been argued by the learned counsel appearing for the second party that the second party had served the first party organisation for a period of more than five years i.e. from 1st December 2014 to 10th December 2019 and during his continuance he was never asked for any show cause, nor charge sheeted for any misconduct, but for his remaining on leave for a day i.e. for 10th December 2019 he has been thrown out of employment by way of termination of service vide order dated 24th December 2019 (Ext. 6) and that too retrospectively w.e.f. 10th December 2019, which clearly reflects the high handedness of the authority. He went on to contend that had there been any misconduct on the part of the second party the first party ought to have conducted an enquiry into the matter and arriving at the guilt of the second party action as deemed fit could have been taken and without adopting such a course and ignoring the continuous employment of the second party the first party in gross violation of the provisions of the ID Act as well as the principles of natural justice has retrospectively terminated his employment w.e.f. 10th December 2019 vide order dated 24th December 2019, which is not at all sustainable in the eye of law.

10. The submissions laid by the parties lead this Tribunal to examine the evidence on record to see as to if the termination of service of the second party is legal as well as justified in the eye of law or not.

The second party WW 1 in his examination in chief has almost reiterated his claim advanced in the claim statement. He stated in his evidence that he had served for a period of more than five years under the first party i.e. from 1st December 2014 till 24th December 2019 and during his continuance under the first party he was never asked for any show cause, nor charge sheeted for any misconduct, but for his remaining on leave for day i.e. for 10th December 2019 he has been terminated from employment retrospectively w.e.f. 10th December 2019 vide order dated 24th December 2019 (Ext. 6). During cross-examination he denied to the suggestion of the first party that on 9th December 2019 he was absent from duty unauthorisedly. Though he admitted in cross examination that on 9th December 2019 at about 12-30 P.M. the Secretary of Angul United Central Co-operative Bank wanted some information from him over telephone and to that he had replied to reach Gondia Branch after completing the Kaluria PACS system issue, but he denied to the suggestion of the first party that on 9th December 2019 he was not present at Kaluria PACS and that he did not come to the Gondia Branch on the same day. He admitted in his cross examination that Ext. A was a reminder issued to him asking him not to be negligent in duty henceforth. He denied to have voluntarily abandoned the employment of the first party and that for his negligence in providing technical support to the software issues the consumers faced different problems.

MW 1 in his evidence has stated regarding the second party's remaining absent from duty on 9th December 2019 and 10th December 2019. He has proved the photo copy of the caution letter issued to the second party to improve his performance and to be sincere in future (Ext. A) and the photo copy of the complaint received from the Secretary, Angul United Central Cooperative Bank regarding absence of the second party from his duty on 9th December 2019 (Ext. B) and

photo copies of some WhatsApp messages (Ext. C). In cross-examination MW 1 has fairly admitted that the second party has worked under the first party from 1st December 2014 to 24th December 2019. He has also admitted in cross examination that the second party was not entrusted specifically to 'work in the Gondia Branch, but in all branches of Angul CCB. His evidence in cross examination further reveals that the second party was intimated regarding initiation of disciplinary proceeding against him, but at the same time he could not say if memorandum of charges were served upon the second party and regarding service of copy of the enquiry report or the second show cause on the second party. It is also admitted by MW 1 that no retrenchment compensation was paid to the second party at the time of termination of his service and soon after his termination another Engineer has been posted in his place.

On an analysis of the evidence, as discussed above, what transpires is that on the ground of negligence in duty the service of the second party was terminated by the first party taking recourse to the terms of his appointment dated 1st June 2015, but curiously enough the first party has not filed copy of such appointment letter for perusal. Be that as it may, the action of the first party can be said to be a termination of service of the second party on account of his remaining unauthorised absence from duty for which it was incumbent upon the first party to cause an enquiry into the misconduct following the principles of natural justice and on conclusion thereof action as deemed proper could have been taken on such proved misconduct. As it reveals from record, no such proceeding was initiated against the second party, who was admittedly a confirmed employee of the first party nor the principle of "audi alteram partem" was adhered to by the first party while terminating his service. In this background, the Tribunal is of the firm view that the termination of the services of the second party without holding disciplinary enquiry was totally unjustified and de hors the requirements of law and in gross violation of principles of natural justice. In the context, a reference may be made to the recent judgment of the Hon'ble Apex Court dated 16th April 2024 in the case of Sandeep Kumar, Appellant(s) Vs. GB Pant Institute of Engineering and Technology, Ghurdauri & Ors., Respondent(s), reported in 2024 INSC 309.

11. Apart from what have been stated above, there being clear evidence on record that the second party was under the employment of the first party for the period from 1st December 2014 to 24th December 2019 and while terminating his service there was no compliance of the provisions of the ID Act and moreover there has been admitted violation of the provisions of Section 25-H of the ID Act, inasmuch as, the second party was neither given one month's notice or in lieu thereof one month's wages, nor retrenchment compensation and further another Engineer has been posted to work in place of the second party after his termination, the action of the first party amounts to retrenchment of service of the second party in gross violation of the provisions of the ID Act.

In the context, it may be noted here that "Section 25F(b) provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. In the case in hand, the evidence of the second party that he was continuously served under the first party for a period of more than five years is found to have not been shaken in any manner, rather it has been admitted by MW 1 in his cross examination at Para. 16 that the second party had worked under the first party for the aforesaid period. In view of the above, the termination of service of the second party can also be held to be illegal owing to non-compliance of the mandatory provisions of the ID Act.

12. In the result, the action of the first party in terminating the services of the second party is found to be neither legal nor justified.

Issue No. (iii) is answered accordingly in favour of the second party.

13. *Issue No. (iv)*—Now coming to decide the relief(s) to which the second party is entitled, the materials available on record show that the second party was a confirmed employee of the first party; he is now aged about 37 years; remained in the employment of the first party for nearly five years and after his illegal termination the post occupied by him has in the meantime been filled-up by a fresh candidate. Keeping the aforesaid factum in view and the strained relationship existing between the parties, the Tribunal is not inclined to pass an order of reinstatement but in lieu thereof monetary compensation is found to be an appropriate relief to be awarded in favour of the second party to compensate him for the sufferance. Accordingly, the first party is directed to pay the second party a lump sum compensation of Rs. 2,00,000 (Rupees two lakh) only in lieu of his reinstatement and back wages within a period of two months of the date of publication of the 'Award' in the Official Gazette, or else the amount of compensation would carry a simple interest of 6% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA
1-06-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
1-06-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 5738—LESI-IR-ID-0016/2022-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government